



## Legislative Bulletin.....September 6, 2007

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**H.R. 2786**—Native American Housing Assistance and Self-Determination Reauthorization Act

### Summary of the Bills Under Consideration Today:

**Total Number of New Government Programs:** 1

**Total Cost of Discretionary Authorizations:** \$3.35 billion over five years

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

### **H.R. 2786—Native American Housing Assistance and Self-Determination Reauthorization Act (*Rep. Kildee, D-MI*)**

**Order of Business:** The bill is scheduled to be considered on Thursday, September 6<sup>th</sup>, likely subject to a modified open rule, making in order any germane amendment that has been pre-filed in the *Congressional Record* on or before September 5<sup>th</sup>. A summary of the pre-filed amendments will be provided in a separate RSC document.

**Background:** The Native American Housing Assistance and Self Determination Act of 1996 (“NAHASDA”; 25 U.S.C. 4101 et seq.) reorganized the system of housing assistance provided to Native Americans through the Department of Housing and Urban Development (HUD) by eliminating several separate housing assistance programs and replacing them with a block grant

program. The two programs authorized for Indian tribes under NAHASDA are the formula-based Indian Housing Block Grant (IHBG) and the Title VI Loan Guarantee Program, which provides financing guarantees to Indian tribes for private-market loans to develop affordable housing. NAHASDA was amended in 2000 to add similar programs for Native Hawaiians who reside on Hawaiian Home Lands.

In FY2006 and FY2007, the IHBG was funded at \$624 million each year (which is divided among more than 550 tribes by formula). The President's FY2008 budget requests \$627 million for the block grant. The FY2008 Transportation-Housing and Urban Development Appropriations Act (H.R. 3074), as passed by the House this year, would appropriate \$626,965,000 for IHBG and \$7,450,000 for the Indian loan guarantee program (available to subsidize total loan principal, any part of which is to be guaranteed, up to \$367,000,000).

In FY2006 and FY2007, the Native Hawaiian block grant was \$9 million. The President's budget requests \$6 million for FY2008. The FY2008 Transportation-Housing and Urban Development Appropriations Act (H.R. 3074), as passed by the House this year, would appropriate \$8,727,000 for the Native Hawaiian housing block grant program and \$1,044,000 for the Native Hawaiian loan guarantee program (available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$41,504,255).

The Administration's Program Assessment Ratings Tool (PART) rated the Native American Housing Block Grants (in 2002—most recent year available) as “not performing—results not demonstrated”. The assessment continued that, “The program does not have a history of establishing quantifiable performance goals, targets, and timelines. It, therefore, cannot currently demonstrate what level of impact it has on providing housing to those who need it.”

<http://www.whitehouse.gov/omb/expectmore/summary/10000318.2002.html>

PART rated the Indian Housing Loan Guarantee Program (in 2006) as “performing—effective.” The report notes that, “The annual growth of this program have been outstanding, exceeding its lending target by over 11% in 2006, and the program is making steady progress toward achieving its long-term performance goals.” Additionally, “defaults to date have been low.”

<http://www.whitehouse.gov/omb/expectmore/summary/10006235.2006.html>

A PART report specifically for the Native Hawaiian portions of NAHASDA is not available.

For more background information, visit this website:

<http://www.hud.gov/offices/pih/ih/codetalk/nahasda/>.

**Summary:** H.R. 2786 would reauthorize NAHASDA—the American Indian and the Native Hawaiian elements—through fiscal year 2012 (currently expiring at the end of FY2007).

The bill would also amend IHBG in the following ways:

**Supply Discounts.** Allows tribes to be eligible for federal discounts on supplies in the same manner as are executive branch agencies.

Tribal Contracting and Employment Preferences. Allows the tribal employment or contract preference laws adopted by a tribe to govern with respect to the administration of a grant, irrespective of any other provision of law, with respect to any grant made on behalf of an Indian tribe that is intended to benefit just one tribe.

Unspent Funds. Directs recipient tribes to report on any unobligated or unspent funds from the previous fiscal year.

Developers Fees. Excludes from NAHASDA program income the developers fee paid to tribes in connection with a low income housing tax credit project.

Essential Families. Expands the definition of “essential families” (regarding who may receive grants) to include non-Indian individuals and families.

Local Law Enforcement Officers. Clarifies that local law enforcement officers could be covered by NAHASDA grants.

Operation and Maintenance. Provides that NAHASDA grants may be used to support operational costs of units built with NAHASDA funds, such as rental assistance.

Reserve Account. Allows tribes to establish a reserve account consisting of 20% of their NAHASDA grants.

Carryovers. Allows a tribe to carry over its NAHASDA grant from year to year.

Competitive Bidding. Removes the competitive bid requirement for tribal purchases of goods and services under \$5000.

Criminal Background Checks. Expands the pool of individuals on whom tribes could run criminal background checks.

H.R. 2786 would also create a **new** five-year “self-determined activities” program under which tribes could set aside the lesser of 15% percent or \$1 million of their NAHASDA grant for housing activities (construction, acquisition or rehabilitation) that are not approved or directly regulated by HUD. During calendar year 2011, HUD would review the program and report its findings and recommendations to Congress. Tribes would be prohibited from using this money for infrastructure, commercial and economic development, or operating costs.

H.R. 2786 explicitly stipulates that NAHASDA would not prohibit tribes from competing for funds under the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.) and clarifies that a state may not prohibit such competition for HOME funds based on NAHASDA.

The Government Accountability Office would be tasked with studying the effectiveness of NAHASDA for tribes of different sizes and reporting its findings to Congress.

HUD would have to conduct educational seminars with tribes on how to utilize the loan guarantee program reauthorized by this legislation.

Lastly, H.R. 2786 would reauthorize such sums as necessary for an unspecified national organization that represents the housing needs of tribes to provide training and technical assistance to tribes regarding housing. According to the Republican staff of the Financial Service Committee, the entity that has historically received these funds has been the National American Indian Housing Council (NAIHC). NAIHC was founded in 1974 as a 501(c)(3) to “promote, support, and uphold tribes and tribal housing agencies in their efforts to provide safe, sanitary, and affordable housing for Native people in American Indian communities and Alaska Native villages. To this end, NAIHC provides training, technical assistance, research, communications, and advocacy.”

NAIHC had been receiving approximately \$2 million a year in earmarked THUD appropriations. However, the Bush Administration did not recommend funding for this organization in its FY2008 budget proposal, stating that over the past several fiscal years, sufficient funding has been provided to allow NAIHC to perform training and technical assistance for tribes. No funding specifically for NAIHC was provided in the FY2008 THUD appropriations bill.

**Committee Action:** On June 20, 2007, the bill was referred to the Financial Services Committee, which, six days later, marked up the bill and ordered it reported to the full House by voice vote.

**Possible Conservative Concerns:** Some conservatives may be concerned about reauthorizing separate housing programs for American Indians and Native Hawaiians, rather than having one housing program that would apply to all qualified Americans. Furthermore, some conservatives may be concerned about reauthorizing a grant program that has been deemed ineffective by the Office of Management and Budget. Lastly, some conservatives may be concerned about giving added legitimacy to the claims that Native Hawaiians are a separate tribe (rather than a racial group) deserving of special federal treatment. For more background, see the concerns detailed here: [http://www.house.gov/hensarling/rsc/doc/LB\\_032707\\_HawaiianHousingRule.doc](http://www.house.gov/hensarling/rsc/doc/LB_032707_HawaiianHousingRule.doc).

**Administration Position:** An Administration position was not available at press time.

**Cost to Taxpayers:** CBO reports that the bill would authorize \$646.0 million in FY2008 and a total of \$3.349 billion over the FY2008-FY2012 period.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill would create one new program.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The Financial Services Committee, in House Report 110-295, asserts that,

“H.R. 2786 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.”

**Constitutional Authority:** The Financial Services Committee, in House Report 110-295, cites constitutional authority in Article 1, Section 8, Clause 1 (relating to the congressional power to promote the general welfare of the United States) and Clause 3 (relating to the congressional power to regulate interstate commerce). Some conservatives may question the applicability of these two clauses to American Indian housing.

**Note:** Article VI, Clause 3 of the U.S. Constitution states that, “The Senators and Representatives...and all executive and judicial Officers...shall be bound by Oath or Affirmation, to support this Constitution.”

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